

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.09.2017

Judgment Pronounced on : 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.29 of 2006

M/s.Shanti Theatres Private Ltd.,
Rep. by its Managing Director
G.Prabhu
No.43, Anna Salai,
Madras - 600 002. ... Appellant/Plaintiff

Vs.

Syndicate Bank,
rep. by its Chief Manager,
No.38, Anna Salai Branch,
Madras-600 002. ... Respondent/Defendant

This second appeal has been filed under Section 100 of CPC, against the Judgment and Decree dated 26.04.2005 made in A.S.No.27 of 2005 passed by the learned III Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 26.04.2004 in O.S.No.9794 of 1996 passed by the learned IV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Selvaraju

For Respondent : Mr.S.Vijayakumar

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 26.04.2005 made in A.S.No.27 of 2005 passed by the learned III Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 26.04.2004 in O.S.No.9794 of 1996 passed by the learned IV Assistant Judge, City Civil Court, Chennai.

2. Brief facts of the case is as follows:-

The plaintiff filed the suit for recovery of money. According to the plaintiff, being a private limited company is the owner of the building and premises bearing Door No.44, Anna

Salai, Madras-600 002. The defendant having realised and understood the potential advantage of opening their Branch Office in the premises of the plaintiff, approached the plaintiff for leasing out the said building in their favour. The plaintiff has also accepted their offer and oral tenancy agreement was entered into between the plaintiff and the defendant from January, 1961 onwards. The defendant was in occupation of underground portion, Ground Floor and Second Floor of the said premises. The total plinth area of the tenancy premises occupied by the defendant would be to an extent of 5,048 sq.ft. The plaintiff has periodically revised the rent payable by the defendant and the same was accepted by the defendant, who continued to pay the enhanced rent claimed by the plaintiff from time to time. At the inception of tenancy, the defendant was paying rent at the rate of Rs.2,500/- per month. Later, it was revised at the rate of Rs.3,000/- per month. Then it was increased to Rs.4,500/- per month with effect from first May, 1980 onwards. The defendant has agreed to pay enhanced rent at the rate of Rs.4,500/- per month with effect from 01.01.1981 onwards for a period of 5 years and thereafter agreed for 25% enhancement of rent for the next period of five years through their letter dated 01.04.1982. Thus, the defendant was paying rent at the rate of Rs.4,500/- from 01.01.1981 till 1985 and thereafter at the rate of Rs.5,625/- per month till December, 1990 as per the letter written by the defendant dated 01.04.1982. The said mutual agreement and understanding hold good till December, 1990 and thereafter the plaintiff was entitled to revise and claim enhanced rent from the defendant. After the period of the said agreement was over, enhancement of rent at the rate of Rs.5/- per sq.ft., was sought for by the plaintiff through their letter dated 07.08.1991. The said letter was acknowledged by the defendant and in the usual course, informed the plaintiff in person and also through telephonically that the claim for enhancement of rent made by the plaintiff is under consideration with the higher officials in their office at Manipal and the same will be considered favourably. It was also informed by the defendant through their letter dated 23.12.1991 that the matter relating to rent increase is still under consideration of their officials in the Zonal Office. In the meanwhile, the defendant shifted their office to another place in August, 1990. Even thereafter, they continued to retain the possession of the tenancy premises under lock and key. Since the plaintiff's property viz., suit property remained unoccupied, uncared for and without proper cleaning and maintenance, the walls, windows, electrical fittings, wood works, frames and paints have started deteriorating. Thereafter, the plaintiff was constrained to send letters dated 03.10.1989, 23.10.1989 and 08.01.1990 requesting the defendant to quit and deliver vacant possession of the premises to the plaintiff. Since there is no reply, the plaintiff sent a legal

notice on 07.05.1990 and without giving any reply in writing, the defendant orally requested time for vacating premises. Finally, through their letter dated 12.04.1991 the defendant bank intimated to surrender the vacant possession of the second floor of the tenancy premises with effect from 12.04.1991. On vacating the premises, the defendant failed to pay the rent to the plaintiff with effect from April, 1991 onwards. The defendant has also neglected to pay even the arrears of rent from January, 1991 to April, 1991 at the rate of Rs.5/- per sq.ft. for the area of 5,048 sq.ft. and for the period from first August to 31st April, 1992 at the rate of Rs.5/ sq.ft., for the area of 2644 sq.ft. Hence, the plaintiff claimed total arrears of rent of Rs.2,81,250/- for the suit property. Hence, the plaintiff came forward with the suit.

3. On the other hand, according to the defendant, the suit property was taken on lease in the year, 1961. Initially, the rent paid was Rs.2,500/ per month for the entire premises. Subsequently, the same was increased periodically and finally the defendant was paying rent at the rate of Rs.5,625/- per month in the year, 1990. Subsequently, the plaintiff claimed exorbitant rent at the rate of Rs.5/- per sq.ft. As the defendant Branch Office does not have independent power to decide the rate of rent, the subject matter was informed to the plaintiff, clearly stating that only on the approval by the head office the rent could be increased and paid by the defendant. Thus, it is contended that till then only the existing rent can be paid. The defendant denies that the plaintiff sent a letter dated 27.08.1992. The defendant has handed over the possession of the second floor of the property on 12.04.1991 and the remaining portion was handed over on 27.08.1992. The plaintiff had taken possession of the property on the said dates and they also made endorsement for having taken possession of the suit property. The plaintiff's claim regarding the rental dues as well as the alleged damages was considered and dismissed. It is also pointed out that already a sum of Rs.50,000/- was paid to the plaintiff as admitted arrears of rent, before the High Court in Application No.958/93. Hence, the claim of the plaintiff that arrears of rent at the rate of Rs.5/- per sq. ft., is pending, is absolutely baseless and without any evidence. The alleged claim of the plaintiff is not supported by any documents and at no point of time the bank has ever admitted for the enhancement of rent. Thus, the defendant sought for dismissal of the suit.

4. After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the defendant preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court allowed the appeal and dismissed the suit. Now, aggrieved upon that the plaintiff has come forward

with this second appeal.

5. At the time of admission, the following substantial question of law were framed by this Court for consideration.

1) Whether the first appellate Court is justified in ignoring the plea of estoppel pleaded by the appellant while considering their claim for the arrears of rent for the tenancy premises.

2) Whether the first appellate Court is correct in fixing 25% of enhancement of rent for the premises without any basis?

3) Whether the first appellate Court has committed an error in ignoring the clear admission of D.W.1 about the periodic revision in increasing the rent for the tenancy premises in according with the prevailing market rate while considering the claim of the appellant?

6. The learned counsel appearing for the appellant/plaintiff would submit that the appellant claims for enhancement of rent under Ex.A8 and Ex.A13 is not at all disputed by the defendant and they failed to give any reply will constitute an estoppel on their part to deny the claim made by the plaintiff. Further more, while considering the appeal, the first appellate Court fixed 25% enhancement of rent without any basis. Further, the first appellate Court has also failed to consider the admission made by D.W.1 about the periodical revision in increasing the rent for the tenancy premises in accordance with the prevailing market rate. Hence, the findings of the lower appellate Court is not supported by any evidence and the same is against settled position of law. Hence, the interference of this Court is warranted and they seeks to entertain this appeal. सत्यमेव जयते

7. Per contra, the learned counsel appearing for the respondent/defendant would submit that the first appellate Court arrived at correct conclusion only on the basis of available documents on record, as the plaintiff miserably failed to prove the agreement arrived at between the parties with regard to enhancement of rent at the rate of Rs.5/- per sq.ft. The claim of the plaintiff is absolutely incorrect and not supported with evidence. Hence, the first appellate Court rightly negatived the claim of the plaintiff and fixed the rent on the basis of the previous agreement. Therefore, it is pointed out by the learned counsel for the respondent/defendant that there is no infirmity in the findings of the first appellate Court. Hence, it is

contended that the second appeal is not sustainable and there is no substantial question of law involved in this appeal. Thus, the respondent/defendant seeks dismissal of the appeal.

8.I have heard the rival contention and perused the materials available on record.

9.On perusal, it is apparent that the plaintiff is the landlord and the defendant is the tenant. The said relationship is not disputed by both parties. From the beginning, the rate of rent agreed between the parties was Rs.2,500/- per month, then increased to Rs.3,000/- and then to Rs.4,500 and thereafter increased as Rs.5,625/- per month. The said fact is not disputed by both parties. It is contended that as per the averment in paragraph - 4 of the plaint, there is an admission by the plaintiff, which runs as follows:-

"The Defendant has agreed to pay the said enhancement of rent at the rate of Rs.4,500/- per month with effect from 01.01.1981 onwards for a period of five years and thereafter 25% enhancement of rent for the next period of five years, though their letter dated 01.04.1982.

During the Cross examination, P.W.1 has admitted as follows:-

"1981-ல் இருந்து மாத வாடகை ரூ.4,500/- கொடுத்தார்கள். 1985 வரை அந்த வாடகையை கொடுத்தார்கள். அதன் பின் 25% கட்டி மாத வாடகை ரூ.5625/- வீதம் டிசம்பர் 1990 வரை கொடுத்தார்கள். வா.சா.ஆ.3 கடிதத்தில் நாங்கள் கேட்ட வாடகைகளை பிரதிவாதி வா.சா.ஆ.4 கடிதத்தின் படி ஒப்புக் கொண்டுள்ளனர். நாங்கள் பிரதிவாதியிடம் சதூர அடிக்கு ரூ.5/- வீதம் வாடகை கேட்டதற்கு அவர்கள் அதை ஒப்புக் கொண்டதற்கும் ஆவணம் எதுவும் தாக்கல் செய்யவில்லை. வா.சா.ஆ.16 கடிதத்தில் பிரதிவாதி ஒப்புக் கொண்ட கூடுதல் வாடகை கொடுக்க வேண்டியது உள்ளது என்று குறிப்பிட வில்லை. வா.சா.ஆ.16 கடிதத்தை நாங்கள் பிரதிவாதிக்கு அனுப்பியதற்கு அத்தாட்சி இல்லை. நாங்கள் சதூர அடிக்கு ரூ.5/- வீதம் வாடகை கேட்டதை பிரதிவாதி தர மறுத்தால் சிறு வழக்குகள் நீதிமன்றத்தில் வாடகை நிர்ணயம் செய்யப்பட்டு வழக்கு எதுவும் போடவில்லை."

10.On the side of the plaintiff, P.W.1 has clearly and categorically admitted that there is no proof available with them to prove that the defendant accepted and agreed to pay the enhanced rent at the rate of Rs.5/- per Sq.ft. If the landlord demanded higher rent and tenant failed to agree for the enhanced rent, the only remedy available to the landlord is to take appropriate steps before the Court of law to seek fixation of

fair rent for the suit property, but in the case on hand, no such step was taken by the plaintiff. In Para No.5 of the Chief Examination by proof affidavit, the plaintiff admits "that the defendant through their letter dated 23.12.1991 has again reiterated that they have told orally in all these days for the claim of enhancement of rent, by informing that the matter is still under consideration of their officials in the Zonal Office." On the side of the plaintiff, no piece of paper is produced to prove acceptance of the enhanced rent by the defendant at the rate of Rs.5/- per sq.ft. However under the said circumstances, the claim for enhancement of rent at the rate of Rs.5/- per sq.ft., is not tenable. In this regard, the learned counsel appearing for the appellant/plaintiff relied on the ruling reported in 1) AIR 2003 SUPREME COURT 1905 in BONDAR SINGH AND OTHERS Vs. NIHAL SINGH AND OTHERS and 2) 2011 (2) MWN (Civil) 87 (Mad.) in RAJI VENKATACHALAM Vs. SHANMUGAM,. The facts relating to the case on hand is not similar to facts of the above said Ruling. As such the said judgment will not have any bearing over the present suit. Further, the plaintiff has not taken any steps to fix the fair rent before the competent Forum. It is also contended that to prove the said claim of the plaintiff, there is no evidence available on record.

11. In such circumstances, relying on the previous agreement entertained between the partys for enhancement at the rate of 25% of existing rent was accepted by the lower appellate Court and fixed the same as rent, instead of claim made by the plaintiff. On that score, the lower appellate Court came to the conclusion that the appeal is to be allowed and suit is to be dismissed. As such it is to be said that as per the calculation of the lower appellate Court, the total arrears comes to Rs.59,780/- and out of the same, the plaintiff received Rs.50,000/- through Court, which was deposited by the defendant. Hence, the lower appellate Court came to the conclusion that no amount is due from the defendant to the plaintiff. The reason adduced by the lower appellate Court is tenable. Against the findings of the lower appellate Court, on the side of the plaintiff, they have not shown any documentary evidence to set aside the first appeal conclusion arrived at by the court before.

12. On the side of the plaintiff, they raised the plea of estoppel and it is contended the same was not considered by the lower appellate Court. As per the available evidence on record that the defendant has not agreed for enhancement of rent at the rate of Rs.5/- per sq.ft., In such circumstances, no question of estoppel will arise since the enhancement was not agreed upon by the defendant as stated supra. Thus, this substantial question of law is not sustainable and it is

answered against the plaintiff.

13. The 2nd Substantial Question of law raised in the appeal is with regard to increase of 25% in the rent without any basis. Admittedly, when there is no documentary evidence and when there is no bilateral agreement between the parties, regarding the revision of rent the lower appellate Court fixed the enhanced rent on the available material as 25% of the existing rate. The above said 25% enhancement was based upon the previous agreement between the parties, that is the base for fixing 25% enhancement. As such, this Court is of the view that there is no infirmity in the said finding of the Court below. Hence, the second substantial question of law is also answered against the appellant/plaintiff.

14. The next and last substantial question of law raised by the plaintiff is that D.W.1 has admitted about the periodical revision in accordance with the prevailing market rate. Admittedly, the defendant is the Public undertaking Banking Institution, the agreement was made between the plaintiff and the defendant Head Office. D.W.1 is only a Branch Manager and he has no right or locus standi to enter into an agreement with the plaintiff. If really D.W.1 has entered into an agreement with the plaintiff on behalf of the defendant with regard to the rent, the plaintiff could very well have produced the said agreement before the Court but no such agreement is produced. In such event, first of all, the plaintiff has to prove that D.W.1 is the competent person to report the defendant bank to enter into an agreement with the plaintiff. As such without producing any written agreement entered into between the parties and without showing that D.W.1 is the competent person to accept the fixation of rent, passing remarks of D.W.1 alone is not sufficient to sustain the plaintiff claim. Further the plaintiff himself clearly and categorically admitted that the defendant through their letter dated 21.12.1991 has again reiterated that what they have been told orally all these days regard the claim for enhancement of rent has been communicated to the Head Office and that the matter is still under consideration of their officials in the Zonal Office. As such, is it possible to act against this admission made by the plaintiff. Hence, the claim of the plaintiff for enhanced rent on the basis of so called oral, admission made by D.W.1 with regard to periodical revision of rent in accordance with the prevailing market rate is not sustainable. Hence, the 3rd substantial question of law is also answered against the plaintiff.

15. It is clear from the above said discussion, that there is no merits in this appeal and the substantial question of law raised in this appeal is already agitated, discussed and disposed by the lower Court itself. The substantial question of

law is answered against the appellant/plaintiff. For the above said reason, the appeal cannot be entertained and the same is to be dismissed. The point is answered accordingly.

16.In the result, the second appeal is dismissed. No costs. The Judgment and Decree dated 26.04.2005 made in A.S.No.27 of 2005 passed by the learned III Additional Judge, City Civil Court, Chennai is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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1.The III Additional Judge,
City Civil Court,
Chennai-104

2.The IV Assistant Judge,
City Civil Court,
Chenna-104.

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The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.K.Selvaraj, Advocate, S.R.No. 68704
+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.68425

S.A.No.29 of 2006

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